

# SENATE RECORD VOTE ANALYSIS

105th Congress  
2nd Session

Vote No. 305

October 7, 1998, 5:47 p.m.  
Page S-11687 Temp. Record

## INTERNET TAX FREEDOM ACT/4-Year Moratorium

**SUBJECT:** Internet Tax Freedom Act . . . S. 442. McCain/Wyden amendment No. 3783 to the McCain/Wyden modified amendment No. 3719, as amended.

### ACTION: AMENDMENT REJECTED, 45-52

**SYNOPSIS:** The Finance Committee substitute to S. 442 (both the Commerce Committee and the Finance Committee reported versions of the bill), will impose a 2-year moratorium beginning July 29, 1998 on certain State and local taxation of online services and electronic commerce (the Commerce Committee substitute would impose a 6-year moratorium), and will establish an advisory commission on electronic commerce to study the issue and make recommendations during that moratorium.

The McCain/Wyden modified amendment, as amended, would change the moratorium to 3 years instead of 2 years. As amended by a Dorgan amendment, it would define the term "generally imposed and actually enforced." That term is used to define those Internet access taxes that will be "grandfathered" (allowed to remain in force) by this bill. Specifically, access taxes that were in force before October 1, 1998, could remain in force during the moratorium if they had generally been collected or if the taxing authority had "by virtue of a rule or other public proclamation" made known to providers of Internet access services that the taxes had been imposed. Also, the amendment would make clear that this bill did not affect any State or local government's constitutional taxing authority or federally granted taxing authority, and that this bill did not affect any ongoing litigation regarding tax liabilities.

**The McCain/Wyden second-degree amendment** to the McCain/Wyden amendment would change the moratorium to 4 years instead of 3 years.

NOTE: After the vote, the Senate failed to table the underlying amendment (see vote No. 306).

**Those favoring** the amendment contended:

We do not believe that there should be any time limit on the moratorium. The moratorium should last until all of the issues are worked out, Congress has passed legislation, and States have been given time to change their laws to meet the uniform and

(See other side)

YEAS (45)			NAYS (52)			NOT VOTING (3)	
Republicans (32 or 59%)		Democrats (13 or 30%)	Republicans (22 or 41%)		Democrats (30 or 70%)	Republicans (1)	Democrats (2)
Abraham	Hagel	Akaka	Bond	Biden	Harkin	Specter <sup>-2</sup>	Glenn <sup>-2</sup>
Allard	Hatch	Baucus	Brownback	Bingaman	Johnson		Hollings <sup>-2</sup>
Ashcroft	Kyl	Boxer	Chafee	Breaux	Kennedy		
Bennett	Lott	Dodd	Collins	Bryan	Kerrey		
Burns	Lugar	Inouye	Enzi	Bumpers	Kohl		
Campbell	Mack	Kerry	Frist	Byrd	Landrieu		
Coats	McCain	Lautenberg	Gorton	Cleland	Levin		
Cochran	McConnell	Leahy	Gramm	Conrad	Mikulski		
Coverdell	Murkowski	Lieberman	Grassley	Daschle	Moseley-Braun		
Craig	Nickles	Murray	Helms	Dorgan	Moynihan		
D'Amato	Santorum	Robb	Hutchinson	Durbin	Reed		
DeWine	Shelby	Torricelli	Hutchison	Feingold	Reid		
Domenici	Smith, Bob	Wyden	Inhofe	Feinstein	Rockefeller		
Faircloth	Smith, Gordon		Jeffords	Ford	Sarbanes		
Grams	Stevens		Kempthorne	Graham	Wellstone		
Gregg	Warner		Roberts				
			Roth				
			Sessions				
			Snowe				
			Thomas				
			Thompson				
			Thurmond				
						<b>EXPLANATION OF ABSENCE:</b>	
						1—Official Business	
						2—Necessarily Absent	
						3—Illness	
						4—Other	
						<b>SYMBOLS:</b>	
						AY—Announced Yea	
						AN—Announced Nay	
						PY—Paired Yea	
						PN—Paired Nay	

Compiled and written by the staff of the Republican Policy Committee—Larry E. Craig, Chairman

nondiscriminatory standards that are developed. As a compromise, we are willing to agree to a time limit that should be sufficient to get the job done. Then, if it turns out that we have not allotted enough time, we will vote to extend the deadline. The current 2-year limit that is in this bill is too short. The commission will not even report its recommendations for 18 months. Congress and the States will not then have time to make adjustments to law, taking into consideration the commission's recommendations, in the remaining 6 months. Many State legislatures do not even meet each year. If a State legislature has recessed for a year when the commission issues its recommendations, it may well be more than 1 year before it will reconvene. With a 2-year moratorium, some States may find themselves more than 1 year behind the other States; with a 3-year moratorium, the disparity would be much smaller; with a 4-year moratorium, we are fairly confident that Congress and the States would have ample time to enact laws.

The main objection that our colleagues have raised is that they believe that the effect of a longer moratorium would be to deprive States of sales taxes on Internet sales. However, all it will do is deprive the States of the ability to discriminate against Internet sales. States will be able to collect taxes on intrastate Internet sales if they impose the same taxes on other intranet sales; and just as they cannot mandate tax collections from other out-of-State companies that sell goods in their States, they will not be able to mandate tax collections from out-of-State Internet companies. This bill is about stopping discrimination and conflicting tax requirements from being placed on Internet commerce; it does not touch the issue of sales taxes. Current law on that score is not being changed by this bill. Many State and local jurisdictions may well want to burden Internet commerce with other taxes as a substitute for the sales taxes that they cannot collect; we do not favor allowing such taxes if they prove unwieldy or discriminatory. The moratorium will give us time to come up with a fair way of taxing the Internet; it is not about our opinion of the *Quill* decision, which is the decision that stopped States from ordering out-of-State firms to collect sales taxes due. That decision said that Congress has the authority to let States mandate such tax collections; instead of trying to shorten the moratorium to give the States a backdoor means of sneaking around the *Quill* decision, we think our colleagues should concentrate on trying to win majority support in Congress for their view that States should be allowed to mandate such tax collections. They clearly do not have majority support for that proposition in Congress now.

The real issue before us is how long it will take to work out the tax questions involved in taxing Internet commerce. Those questions can be very complex. For instance, suppose someone in Arkansas uses America Online in Virginia to place an order with a small company in Oregon using a bank card in California to pay for a product that will be shipped to a friend in Maryland? Who should pay what taxes? We think that 4 years is a reasonable amount of time to work out and implement the solutions to those problems. We therefore support this amendment.

**Those opposing the amendment contended:**

By the end of 4 years Internet commerce in the United States will exceed \$400 billion annually. That commerce will displace sales by merchants who have to pay sales taxes. State and local governments, assuming an average sales tax of 5 percent, will thus lose \$20 billion in tax revenues in the fourth year alone if we allow this moratorium to last 4 years. We imagine that the businesses that sell on the Internet love the idea that their competitors will be disadvantaged by having to collect sales taxes for 4 years while they will not have to collect anything. State and local governments, though, will lose desperately needed funds for schools, fire departments, road repair, and other public goods. The supposed reason why a 4-year moratorium is necessary is that it will take that long to study the issue and devise and implement solutions. We do not see why it should take so long. We note for instance, that we gave only 15 months to develop a proposal to restructure the entire Internal Revenue Service, and we ordered the Medicare Commission to complete its work in 18 months. Internet tax issues are obviously less complex than reforming Medicare or restructuring the Internal Revenue Service, so 4 years is simply way too much time to take to get the job done. In all honesty, many of us do not favor any moratorium, much less a 4-year moratorium, but we understand that the States are willing to accept a 3-year tax ban as a compromise. Therefore, we oppose this amendment, but we will not object to the underlying amendment.